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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,777	03/31/2004	Michael Varner	VARNERBOX	5231

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/813,777

Applicant(s)

VARNER, MICHAEL

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 11-10-04 and this action is final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,577,646 to White.

Referring to claims 1 and 4, White discloses an animal carrier product for carrying an animal on a cycle, the product being mounted to the cycle at a saddlebag position for increased stability and to accommodate a human passenger while the product is in use, the saddlebox mounting to a commercially available saddlebag mounting bracket that is preattached to the cycle, the saddlebox and a commercially available saddlebag being interchangeably mountable to the saddlebag mounting bracket, the product comprising, a saddlebox – at 10, for holding the animal the saddlebox comprising, an exposed section – see proximate ventilation openings 45 in

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item 10, the exposed section for exposing the animal to the outside environment, a sheltered section – at the front portion of item 10 (the portion proximate the seat of the cycle as seen in figure 1), the sheltered section for sheltering the animal to the outside environment, the exposed section and the sheltered section connected together – see for example figure 1, so that the animal can move autonomously from the exposed section to the sheltered section and so that the animal can move autonomously from the sheltered section to the exposed section while the product is in use – see for example figure 1, and mounting means – at 18,22,61,65, for mounting the product to the cycle at the saddlebag position, the mounting means being configured to enable the saddlebox – at 10, to mount to the commercially-available saddlebag bracket – at 17 and 58-65, that is pre-attached to the cycle – see for example figure 1 and column 3 lines 55-67 and column 4 lines 1-27, and to mount interchangeably with a commercially-available saddlebag cargo container – see for example figure 1. White further discloses the mounting means comprising a hook – at 17, for hooking to the commercially-available saddlebag bracket – at 58-65, and a saddlebox fastener – at 53-56, configured to connect to a bracket fastener – at 61-66, the bracket fastener being part of the commercially-available saddlebag bracket – see for example figures 1-8.

Referring to claims 2 and 5, White discloses a window – at 30 or the front of item 10, the window being connected to the exposed section – see figure 1, the window being substantially transparent and the window enabling the animal to view the outside environment – see for example column 3 lines 20-55.

Referring to claims 3 and 6, White discloses a deflector – at the back of item 10, the deflector being connected to the product so that the deflector deflects direct sunlight and deflects

strong wind from entering the exposed section – see for example figure 1 and column 3 lines 20-55.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by FR Patent No. 2698335.

Referring to claims 1 and 4, the French patent discloses an animal carrier product for carrying an animal on a cycle, the product being mounted to the cycle at a saddlebag position for increased stability and to accommodate a human passenger while the product is in use, the product comprising, a saddlebox – at 7, for holding the animal the saddlebox comprising, an exposed section – at 1-6, the exposed section for exposing the animal to the outside environment, a sheltered section – at the inside of 7, the sheltered section for sheltering the animal to the outside environment, the exposed section and the sheltered section connected together – see for example figures 1-4, so that the animal can move autonomously from the exposed section to the sheltered section and so that the animal can move autonomously from the sheltered section to the exposed section while the product is in use – see for example figures 1-4, and mounting means – see at the bottom of item 7 in figure 4, for mounting the product to the cycle at the saddlebag position, the mounting means being configured to enable the saddlebox – at 7, to mount interchangeably with a commercially-available saddlebag cargo container – see for example figures 1-4.

Referring to claims 2 and 5, the French patent discloses a window – at 1-3, the window being connected to the exposed section, the window being substantially transparent and the window enabling the animal to view the outside environment – see for example figures 1-4 and the English abstract.

Referring to claims 3 and 6, the French patent discloses a deflector – at the rear of item 7 as seen in figure 4, the deflector being connected to the product so that the deflector deflects direct sunlight and deflects strong wind from entering the exposed section – see for example figure 4.

Response to Arguments

3. Regarding claims 1-6, applicant argues that the White reference US 5577646 does not disclose the specific saddlebag position defined by applicant as being beside a wheel of the cycle and below the top portion of the cycle. It does not appear that applicant has claimed the animal carrier in combination with a cycle and therefore the structure of the animal carrier and not the cycle and the location of the animal bag on the cycle is deemed to be the invention which as seen above in paragraph 2 of this office action is disclosed by the White reference. Further, the animal carrier – at 10, of the White reference is capable of being mounted at any position on the cycle in relation to the wheel of the cycle depending on the mount attaching the animal carrier to the wheel. As seen in paragraph [0014] of applicant's disclosure, "The saddlebag position, ...refers to the mounting position typified by modern commercially available saddlebag cargo containers..." As seen in figures 1-2 of the White reference, a mounting position of a modern commercially available cargo container – at 10, is shown at the rear of the cycle proximate the wheel. This position is a mounting position for commercially available containers such as the container of the White reference or the container shown in the O'Donnell reference US 5718191 previously cited, which can be attached to the cycle. Therefore it is the examiner's position that

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the White reference shows an animal container mounted in a position typified by a modern commercially available cargo container. Alternatively, applicant's definition of the older saddlebags as seen in paragraph [0012] of applicant's disclosure, meets applicant's definition of the modern saddlebag. The older saddlebag as defined by the applicant has portions hanging down and are therefore alongside and proximal the wheel, with the saddlebag being substantially below the top portion such as the handlebars of the cycle since the saddlebag is mounted on top of the rear portion of the cycle. Therefore, the device of the White reference is deemed to disclose applicant's modern saddlebag and position. Further, as seen in Merriam-Webster's Collegiate Dictionary 10th edition, the term "alongside" is defined as close by. It is deemed that the container – at 10, is close by the wheel and therefore alongside the wheel, as seen in figures 1-2 of the White reference. Further, as seen in figures 1-2 of the White reference the animal container – at 10, is shown with portions below the top of the bicycle being the seat portion or handlebars not shown and the animal container is proximate the wheel and therefore meets applicant's definition of being located in the "saddlebag" position. Further, applicant states that the animal carrier of the present invention has a lower center of gravity and than the animal carrier of the White reference and therefore is more stable than the animal carrier of the White reference. However, applicant does not supply any evidence to support this claim. Further, applicant argues that the animal carrier of the White reference does not allow for a human passenger to be carried by the cycle behind the driver of the cycle. However, applicant does not claim the animal carrier in combination with the cycle and does not indicate that the cycle is intended to carry more than one human passenger. The term "cycle" can be construed as a

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standard bicycle as seen in figures 1-2 of the White reference, which has only one seat and is intended to carry only one human passenger.

Applicant has provided no arguments regarding claims 1-6, with respect to the French patent FR 2698335.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OP
David Parsley
Patent Examiner
Art Unit 3643


PETER M. POON
SUPERVISORY PATENT EXAMINER
1/31/05